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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1959.

No. 687

MARY C. HUDSON, as Administratrix of the Estate of Herbert A. Hudson, Deceased,

Petitioner,

vs.

TRANSOCEAN AIR-LINES, a Corporation, and SLICK AIRWAYS, INC., a Corporation,

Respondents.

PETITION FOR A WRIT OF CERTIORARI to the United States Court of Appeals for the Ninth Circuit.

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PETITION FOR A WRIT OF CERTIORARI
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for the Ninth Circuit.

Your petitioner, Mary C. Hudson, as administratrix of the estate of Herbert A. Hudson, respectfully petitions this Honorable Court for a writ of Certiorari directed to the United States Court of Appeals, for the Ninth Circuit, to review and reverse the judgment of said lower Court, entered on the records of

said Court on the 9th day of December, 1959, affirming the judgment of the United States District Court, for the Northern District of California, Southern Division, when said District Court sustained respondent's motion for summary judgment.

OPINIONS OF COURTS BELOW.

The opinion and judgment of the United States Court of Appeals sought to be reviewed is reported in ..... Federal Reporter 2d, ..., affirming the decision on the authority of King v. Pan American World Airways, 270 Fed. 2d 355 (9th Cir. 1959). The judgment of this United States Court of Appeals (Appendix "C") affirmed the Judgment of the United States District Court, for the Northern District of California, Southern Division (Appendix "F").

JURISDICTION.

The United States Court of Appeals made its judgment on the 9th day of December, 1959, and it was entered on the 9th day of December, 1959.

Jurisdiction of this Court is conferred by Title 28, Section 1254, Sub-section 1 of the United States Code. June 25, 1948, c. 646, 62 Stat. 928.

> "Cases in the Court of Appeals may be reviewed by the Supreme Court by the following methods:

1. By Writ of Certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree."

QUESTION PRESENTED.

When the death of a person occurs on the high seas under such circumstances as to come within the provisions of the Federal "Death on the High Seas Act", will the provisions of the California Workmen's Compensation Act *extinguish* the federal cause of action and remedy, when the deceased was an employee of the respondent?

CONSTITUTIONAL PROVISIONS INVOLVED.

Two Constitutional provisions are involved. Article I, Section 8, Clause 3 of the United States Constitution:

> "The Congress shall have power . . . to regulate Commerce with Foreign Nations, and among the several States, and with the Indian Tribes."

Article III, Section 2, Clause 1 of the United States Constitution:

> "The Judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States . . . to all cases of admiralty and maritime jurisdiction."

STATUTES INVOLVED.

(a) Federal Statutes.

Death on the High Seas Act.

Section 1:

"Whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State, or the District of Columbia, or the Territories or dependencies of the United States, the personal representative of the decedent may maintain a suit for damages in the district courts of the United States, in admiralty, for the exclusive benefit of the decedent's wife, husband, parent, child, or dependent relative against the vessel, person, or corporation which would have been liable if death had not ensued." (Mar. 30, 1920, c. 111, Sec. 1, 41 Stat. 537.)

Section 7:

"The provisions of any State Statute giving or regulating rights of action or remedies for death shall not be affected by this chapter. Nor shall this chapter apply to the Great Lakes or to any waters within the territorial limits of any State, or to any navigable waters in the Panama Canal Zone." (Mar. 30, 1920, c. 111, Sec. 7, 41 Stat. 538.)

The entire statute, sections 1-7, is set out in Appendix "D", pp. 26-28.

(b) State Statutes.

California Workmen's Compensation Act

Section 3600, California Labor Code:

"Liability for the compensation provided by this division, in lieu of any other liability whatsoever

to any person except as provided in section 3706, shall, without regard to negligence, exist against an employer for any injury sustained by his employees arising out of and in the course of the employment and for the death of any employee if the injury proximately causes death, in those cases where the following conditions of compensation concur. . . ." (Stats. 1929, c. 227, p. 430, Section 1.)

Section 3601, California Labor Code:

"Where the conditions of compensation exist, the right to recover such compensation, pursuant to the provisions of this division is, except as provided in section 3706, the exclusive remedy against the employer for the injury or death." (Stats. 1937, c. 90, p. 269; Section 3601.)

Section 3706 referred to above is not applicable in the case at bar.

STATEMENT OF THE CASE.

The United States District Court in admiralty had jurisdiction under the provisions of the Death on the High Seas Act, *supra.*

On July 12, 1953 a DC-6 Aircraft owned and operated by respondent Transocean Air Lines, Inc., departed Guam east bound for Hawaii carrying 49 passengers and a crew of eight which included the decedent Herbert Hudson, the co-pilot. The aircraft crashed into the Pacific Ocean approximately 340 miles east of Wake Island, being a point more than a marine league from any shore. Herbert Hudson did

not survive the crash and left surviving him a widow, one minor child and one posthumous child.

A motion for summary judgment having been granted the respondent on the sole grounds that the California Workmen's Compensation Act was the exclusive remedy and a complete defense to the admiralty action, additional facts as to loss, wrongful act, neglect or default are not set out herein. An award was made and is set out in Appendix "E".

ARGUMENT.

This petition is for a hearing and decision to determine a question of federal jurisdiction which appears never before to have been specifically determined by this court. The question is of wide and general interest. The enormous growth of air travel over the high seas requires a final ruling from this Court setting at rest any doubts as to the remedy available to dependents of passengers and crew members in the event of their death on the high seas during such flights. In addition to this question of federal law which has not been, but should be settled, the opinion of the Court below appears to be in conflict with opinions of this Court and with other United States Courts of Appeals.

1. THE DECISION OF THE COURT BELOW IS CONTRARY TO THE DECISIONS OF THIS COURT.

The United States District Court, and the United States Court of Appeals in the case below held that the California Workman's Compensation Act superseded the federal Death on the High Seas Act. Such a holding is contrary to the decision of this Court in the case of *Pope & Talbot, Inc. v. Hawn*, 346 U.S. 406, 98 L. Ed. 143, 74 S. Ct. 202. The Court stated on page 409:

> "While States may sometimes supplement federal maritime policies, a state may not deprive a person of any substantial admiralty rights as defined in controlling acts of Congress or by interpretative decisions of this Court. These principles have been frequently declared and we adhere to them." (Citing cases.)

On two previous occasions this Court has declared unconstitutional acts of Congress which attempted to place admiralty jurisdiction under the control of state compensation laws. See *Washington v. W. C. Dawson & Co.*, 264 U.S. 219, 68 L. Ed. 646, 44 S. Ct. 302; *Knickerbocker Ice Co. v. Stewart*, 253 U.S. 149, 64 L. Ed. 834, 40 S. Ct. 438. It would seem that such jurisdiction may not be granted by judicial interpretation of a federal statute, which would allow a state to do by state statute, what the Congress could not do directly.

The area of application of the Death on the High Seas Act is clearly indicated from a reading of that portion of the statute defining the coverage of the Act. The language is: ". . . beyond a marine league

from the shore of any State . . .". The area is thus simply but definitely defined and is that area in which all concede that the Congress has paramount right to control by legislation.

The District Court and the United States Court of Appeals in the case below, insist that the previous decisions of this Court relating to state territorial waters, frequently referred to as "the twilight zone cases", compel, or at least permit a holding that the State Workmen's Compensation Statute abrogates the Act of Congress, namely the Death on the High Seas Act. We respectfully suggest that these "ship shore" cases can have no application in the case at bar. This Court has previously said plainly enough, although inferentially, that State Workmen's Compensation Acts, and State death Acts apply only to injuries and deaths in State territorial waters. We refer to this Court's rulings in *The Tungus v. Skovgard*, 358 U.S. 588, 3 L. Ed. 2d 524, 79 S. Ct. 503 and in *Hahn v. Ross Island Sand and Gravel Co.*, 358 U.S. 272, 3 L. Ed. 2d 292, 79 S. Ct. 266.

In the *Hahn* case the Court speaks of the right of a waterfront employee injured while working in State territorial waters to bring an action under Oregon law and stated:

> "Of course, the employee could not do this if the case were not within the 'twilight zone', for then the Longshoremen's Act would provide the exclusive remedy."

In the *Tungus* case where the facts involved the death of an oil company worker suffering injury and

death aboard a ship in New Jersey territorial waters, this Court spoke of the Death on the High Seas Act. In the opinion of the Court, and in the concurring and dissenting opinion of the Chief Justice and three of the Justices, it is pointed out that the Death on the High Seas Act may not be applied because of the territorial water locale. Thus in the concurring opinion it is said of the High Seas Act:

> "The effect of Congress' action was to leave the State statutes available as remedial measures *in territorial water death cases.*" (Italics ours.)

This interpretation of Section 7 of the Federal Act is clearly opposed to the interpretation of the Court below, to the effect that State remedies may extend beyond territorial waters and apply on the high seas.

The Court below points to the approval of this Court in earlier decisions, where extraterritorial effect has been given to State Compensation Acts. See the case of *Alaska Packers Asso. v. Industrial Accident Comm.*, 276 U.S. 467, 72 L. Ed. 656, 48 S. Ct. 346. May we respectfully point out that in that decision, and, we believe, in all similar decisions of this Court, the application of State law was approved only because the facts were concerned with work of a "local" character being performed in territorial waters. We point out that in the case below and in the companion case of *King v. Pan American World Airways*, also from the United States Court of Appeals, 9th Circuit, now before this Court on petition for a writ of certiorari, the District Court and the United States Court of Appeals for the Ninth Circuit have in affirming the

decisions been the first Courts since the passage of the Death on the High Seas Act in 1920, to apply State jurisdiction to deaths occurring on the high seas, and holding that State law in that area of historic admiralty jurisdiction supersedes Federal law.

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2. **THE DECISION OF THE COURT BELOW APPEARS TO BE IN CONFLICT WITH THE DECISIONS OF OTHER UNITED STATES COURTS OF APPEALS IN THE INTERPRETATION OF THE DEATH ON THE HIGH SEAS ACT.**

The United States Court of Appeals for the Second Circuit in the case of *Middleton v. Luckenbach S. S. Co.*, 70 Fed. 2d 326, in applying the Death on the High Seas Act, stated as follows:

> p. 328 "Since the occurrence here was on the high seas, the law of admiralty controls and rights must be governed by federal law."

Further examination of that decision supports the position urged by petitioner.

The United States Court of Appeals for the First Circuit held with respect to an employee in a claim against a third party, that since the death was in Boston harbor, the Death on the High Seas Act would not apply. See *Turner v. Wilson Line of Massachusetts*, 242 Fed. 2d 414, the Court stating:

> p. 418 "The Death on the High Seas Act, so-called, 46 USCA 761, et seq., although a law of the United States, does not provide a basis for recovery as sought in the third and fourth counts, because the decedent was neither injured nor died

on the high seas but in Boston Harbor within the territorial waters of Massachusetts."

---

3. **THE DECISION OF THE COURT BELOW DOES NOT ACCEPT THE FACT THAT THE DEATH ON THE HIGH SEAS ACT CREATED A CAUSE OF ACTION AND REMEDY IN ADMIRALTY.**

The Court below expressed the opinion that the work of the decedent not being maritime, admiralty jurisdiction would not attach. This reasoning overlooks the fact that the cause of action and the remedy in admiralty are created and conferred by the Federal statute, and is not dependent upon the characterization of the work of the deceased. The constitutionality of the statute not being questioned, its effect in creating a cause of action in admiralty may not be challenged.

CONCLUSION.

The Death on the High Seas Act having created a cause of action in admiralty and provided a federal forum for its enforcement, and the area of its application, the high seas being traditionally subject to congressional control, it is believed that this Court should hold the federal statute paramount to any state statute to the contrary, and grant the writ of certiorari as petitioned.

Dated, Oakland, California,
February 5, 1960.

JOSEPH EDWARD SMITH,
Attorney for Petitioner.

SHERIDAN DOWNEY, JR.,
JOHN B. KRAMER,
Of Counsel.

(Appendices "A", "B", "C", "D", "E" and "F" Follow.)

Appendix A

United States Court of Appeals
for the Ninth Circuit

MARY C. HUDSON, as Administratrix of the Estate of Herbert A. Hudson, Deceased, *Appellant*, vs. TRANSOCEAN AIR LINES, a Corporation, and SLICK AIRWAYS, INC., a Corporation, *Appellee*.	No. 16,349 Dec. 9, 1959

Appeal from the United States District Court for the Northern District of California, Southern Division.

Before: CHAMBERS, ORR and POPE, Circuit Judges.

PER CURIAM

The decision of the district court is affirmed on the authority of the opinion of this court in King v. Pan American World Airways, 270 F.2d 355 (9th Cir. 1959), rehearing denied December 8, 1959.

(Endorsed:) Per Curiam Opinion. Filed Dec. 9, 1959.
Paul P. O'Brien, Clerk.

Appendix "B"

United States Court of Appeals
For the Ninth Circuit

VIRGINIA J. KING, as Administratrix of the Estate of John Elvins King, *Appellant*, vs. PAN AMERICAN WORLD AIRWAYS, a corporation, *Appellee.*	No. 16,298 Aug. 27, 1959

Appeal from the United States District Court for the Northern District of California, Southern Division

Before: STEPHENS, HAMLIN and JERTBERG, Circuit Judges

JERTBERG, Circuit Judge.

Appellant appeals from the final decree of the district court granting appellee's motion for a summary judgment in its favor. Jurisdiction of the district court was based on U.S.C. Title 28, Section 1333. Jurisdiction of this Court to review such decree is found in U.S.C. Title 28, Sections 1291 and 1294.

The parties agree that the sole and narrow question presented to this Court is whether the California Workmen's Compensation Act ousted the district court of jurisdiction to entertain a suit in admiralty against an employer for wrongful death under the

Death on the High Seas Act by the administratrix of the estate of an airline employee who in the course of his employment was killed in the crash of an airliner on the high seas.

The stipulation of facts presented to the district court is as follows:

"(1) At all times relevant in this action, Respondent, Pan American World Airways, Inc., was and is a New York corporation, organized and existing under the laws of the State of New York with its airline operations divided into three separate divisions: The Pacific-Alaska Division (the Pacific area and Alaska) with headquarters at San Francisco, California; the Latin American division (Central and South America) with headquarters at Miami, Florida; and the Atlantic Division (Europe and East) with headquarters at New York City, New York. Since 1944 the principal headquarters of the Pacific-Alaska Division has been located at the San Francisco International Airport, South San Francisco, California, and the principal headquarters of Pan American World Airways, Inc., for the transaction of business within the State of California has been located at the same place.

"(2) At all times relevant, the decedent, John Elvins King, and Libelant, Virginia J. King, were residents of the State of California;

"(3) The decedent, John Elvins King, was first employed by Respondent, Pan American World Airways, Inc., on or about the 12th day of October, 1942, in San Francisco, California, and began his employment in San Francisco, California. The decedent, John Elvins King, was continuously employed by Respondent, Pan

American World Airways, Inc., from the said 12th day of October, 1942, to and including the 8th day of November, 1957, and was continuously based at San Francisco since December 31, 1947.

"On May 1, 1957, said decedent was assigned the position of Flight Service Supervisor, stationed at the Pan American World Airways, Inc., base at the San Francisco International Airport, South San Francisco, California. That the duties of said employment provided that decedent John Elvins King would fly approximately 600 flying hours during a yearly employment of approximately 2080 hours.

"(4) At and prior to the time of the death of decedent, John Elvins King, on about November 8, 1957, Respondent, Pan American, had 'secured' the compensation rights of its employees under the California Workmen's Compensation Act by securing a policy of Workmen's Compensation Insurance issued by the Travelers Insurance Company, which said policy was in full force and effect at the time of the death of the decedent, John Elvins King.

"(5) The decedent, John Elvins King, left the San Francisco International Airport, South San Francisco, California, alive on November 8, 1957, on board Pan American Flight No. 7, the first stop of which was Territory of Hawaii, U.S.A. At the time of his death, decedent, John Elvins King, was performing services growing out of and incident to his employment, and was acting within the course of his employment, and his death was not caused by intoxication. On November 8, 1957, the airplane entered the water at a point between San Francisco, California, and the

Territory of Hawaii (Hawaiian Islands), more than one marine league from any shoreline. Following said event John Elvins King was dead. The parties do not stipulate as to whether he died in the air or in the water.

"(6) Following the death of decedent, John Elvins King, Respondent, Pan American World Airways, Inc., and Travelers Insurance Company, its Workmen's Compensation Insurance carrier, on December 2, 1957, filed an application before the Industrial Accident Commission of the State of California, being Claim No. SF 183-024, in which Virginia J. King, Jean C. King-Freeman, Richard R. King and Melissa A. King, minors, by their Guardian Ad Litem and Trustee, Virginia J. King, were parties. Said application was filed to determine the liability of applicant, Pan American, for death benefit and burial expense under the California Workmen's Compensation Act. On February 20, 1958, a hearing was held before the Industrial Accident Commission upon said application. At said hearing, Virginia J. King appeared, through counsel, and contested the jurisdiction of the Industrial Accident Commission.

"At said time and place, said Virginia J. King advised that she was appearing specially, and that the application had been filed by Respondents without and against her consent. That Respondents agreed that defendants were not appearing voluntarily. That Libelant advised further that her appearance was not to be considered as a consent to jurisdiction of the Industrial Accident Commission either directly or indirectly, nor was she appearing for any reason other than the

fact that she had been summoned to appear by the Industrial Accident Commission of the State of California after proceedings by Pan American World Airways, Inc.

"As a result of said application and hearing, an order awarding a death benefit in favor of Virginia J. King, Richard R. King and Melissa A. King and against Travelers Insurance Company was made by the California Industrial Accident Commission on March 31, 1958.[1]

"A certified copy of said application (Exhibit 'A') and the order made by the Industrial Accident Commission with respect to said application (Exhibit 'B') in said proceeding are attached as Exhibits 'A' and 'B' hereof, and a certified copy of the opinion of the referee is attached hereto as Exhibit 'C' hereof.

"Entry of this stipulation shall not be deemed an admission by either party as to the relevancy or materiality of any of the facts stipulated to, and the parties reserve their rights in this regard."

Appellant's libel was based upon the Death on the High Seas Act (March 30, 1920, c. 111, Sections 1-7, 41 Stat. 537, 46 U.S.C.A. Sections 761-767). Relevant portions of that Act are as follows:

Section 1. "Whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State, or the District of Columbia, or the Territories or dependencies of the United States, the personal representative of the decedent may maintain a suit for

[1] At oral argument in this case appellant's counsel stated that payment of the award had been accepted by appellant.

damages in the district courts of the United States, in admiralty, for the exclusive benefit of the decedent's wife, husband, parent, child or dependent relative against the vessel, person, or corporation which would have been liable if death had not ensued."

Section 2. "The recovery in such suit shall be a fair and just compensation for the pecuniary loss sustained by the persons for whose benefit the suit is brought and shall be apportioned among them by the court in proportion to the loss they may severally have suffered by reason of the death of the person by whose representative the suit is brought."

Section 5. "If a person die as a result of such wrongful act, neglect, or default as is mentioned in section 761 of this title during the pendency in a court of admiralty of the United States of a suit to recover damages for personal injuries in respect of such act, neglect, or default, the personal representative of the decedent may be substituted as a party and the suit may proceed as a suit under this chapter for the recovery of the compensation provided in section 762 of this title."

Section 7. "The provisions of any State statute giving or regulating rights of action or remedies for death shall not be affected by this chapter. Nor shall this chapter apply to the Great Lakes or to any waters within the territorial limits of any State, or to any navigable waters in the Panama Canal Zone."

As a separate and special defense, the appellee alleged that the rights and obligations of the appellant.

were governed by the provisions of the California Workmen's Compensation Act, and that by virtue of the provisions thereof the rights and remedies afforded by said Workmen's Compensation Act provided the sole and exclusive right and remedy of appellant against the appellee for and on account of the death of the deceased employee, and that by virtue thereof appellant is barred from maintaining the action.

The California Workmen's Compensation Act (cited as sections in the California Labor Code) in its pertinent parts provides:

> Section 3600: "Liability for the compensation provided by this division, in lieu of any other liability whatsoever to any person except as provided in section 3706, shall, without regard to negligence, exist against an employer for any injury sustained by his employees arising out of and in the course of the employment and for the death of any employee if the injury proximately causes death, in those cases where the following conditions of compensation concur: * * *"

> Section 3600.5: "(a) If an employee who has been hired or is regularly employed in this State, receives personal injury by accident arising out of and in the course of such employment outside of this State, he, or his dependents in case of his death, shall be entitled to compensation according to the law of this State * * *"

> Section 3601: "Where the conditions of compensation exist, the right to recover such compensation, pursuant to the provisions of this division is, except as provided in section 3706, the

exclusive remedy against the employer for the injury or death."

Section 3706: "If an employer fails to secure the payment of compensation, any injured employee or his dependents may proceed against such employer by filing an application for compensation with the commission, and, in addition, may bring an action at law against such employer for damages, as if this division did not apply."

Section 5305: "The commission has jurisdiction over all controversies arising out of injuries suffered without the territorial limits of this State in those cases where the injured employee is a resident of this State at the time of the injury and the contract of hire was made in this State. Any such employee or his dependents shall be entitled to the compensation or death benefits provided by this division."

Section 3203: "The provisions of Division 4 and Division 5 shall not apply to employers or employments which, according to law, are so engaged in interstate commerce as not to be subject to the legislative power of the State, nor to employees injured while they are so engaged, except in so far as such divisions are permitted to apply under the Constitution or laws of the United States."

The summary judgment was granted on the ground that the appellant's exclusive remedy was under the California Workmen's Compensation Act, and that appellant was therefore precluded from maintaining the admiralty remedy for wrongful death accorded by the Death on the High Seas Act. (See *King v. Pan American World Airways,* 166 F. Supp. 136.)

Appellant's main contentions are: (1) that the application of the California Workmen's Compensation Act to the instant case is invalid under the holding of the Supreme Court of the United States in *Southern Pacific Co. v. Jensen* (1917), 244 U.S. 205; (2) that the Death on the High Seas Act abrogated the otherwise applicable Workmen's Compensation Act; and (3) that decisions of this Court compel us to hold that the Death on the High Seas Act abrogated the remedy afforded under the California Workmen's Compensation Act.

Before proceeding to discuss appellant's contentions we will note several general observations.

Neither party questions the power of Congress to enact the Death on the High Seas Act. If in the instant case the airplane had crashed on land, whether in the continental United States, in Hawaii, or in any foreign country, the remedy accorded under the Death on the High Seas Act would not have been applicable. If King had survived the crash in the instant case, no remedy would have been available to him under the Death on the High Seas Act.

It is not disputed that due to the interstate and foreign character of business of major airlines Congress has the power under the Constitution to enact a federal compensation act applicable to airline employees and their employers comparable to the specific federal laws enacted as to railroad workers, seamen, longshoremen, and others. Up to the present time Congress has chosen not to exercise such power.

Liability for the compensation provided by the California Workmen's Compensation Act exists against an employer without regard to negligence for any injury sustained by his employee arising out of and in the course of the employment and for the death of any employee if the injury proximately causes death. The right to recover such compensation is the exclusive remedy against the employer except under certain circumstances not here pertinent. The Act applies to all injuries whether occurring within the State of California, or occurring outside the territorial boundaries if the contract of employment was entered into in California or if the employee was regularly employed in California. In *Alaska Packers Assn. v. Industrial Accident Commission of California, etc.*, 294 U.S. 532, the Supreme Court upheld an award made by the Industrial Accident Commission of California to an employee who was injured in the course of his employment in the Territory of Alaska, and whose contract of employment was entered into in California, and who had elected to be bound by the Alaska Workmen's Compensation Law. Such extra-territorial jurisdiction has been sustained on the basis of a state's legitimate interest in protecting employees regularly employed within their state and their families from the consequences of industrial injuries. *Cardillo v. Liberty Mutual Insurance Co.*, 330 U.S. 469.

The applicable state workmen's compensation act has uniformly been held to govern industrial injuries sustained by employees of airlines in the course of their employment whether the crash occurred in this

country or on foreign soil. *Willingham v. Eastern Air Lines*, 2 Cir., 199 F. 2d 623; *Severson v. Hanford Tri-State Air Line, Inc.*, 8 Cir., 105 F. 2d 622, c.d. 309 U.S. 660; *Spelar v. American Overseas Air Lines, Inc.*, 80 F. Supp. 344; *Urda v. Pan American Airways*, 5 Cir., 211 F. 2d 713. See also *Duskin v. Pennsylvania Central Air Lines*, 6 Cir., 167 F. 2d 727, c.d. 335 U.S. 829. In each of the above cited cases wherein a state wrongful death statute was involved it was held that the state workmen's compensation act excluded the operation of the otherwise applicable death act. None of the cases was based upon the Death on the High Seas Act. The rationale of these cases is that the applicable workmen's compensation law governs because it is the law in relation to which the parties contracted and the law affords a certain and speedy remedy to the injured employee, or his family in case of his death.

We will now discuss the appellant's contention: is the application of the California Workmen's Compensation Act to the instant case invalid under the doctrine announced by the Supreme Court in *Southern Pacific Co. v. Jensen*, supra? In the Jensen case the Supreme Court held that the New York State Workmen's Compensation Act would not be validly applied to the death of a stevedore killed while unloading a ship. The Court held that "the general maritime law" was part of our national law and that state legislation was invalid if it "works material prejudice to the characteristic features of such general maritime law". The Court further stated, "The

work of a stevedore, in which the deceased was engaging, is maritime in its nature; his employment was a maritime contract; the injuries which he received were likewise maritime; and the rights and liabilities of the parties in connection therewith were matters clearly within the admiralty jurisdiction". 244 U. S. 217. The Jensen doctrine was reiterated by the Supreme Court in *Knickerbocker Ice Co. v. Stewart* (1920), 253 U.S. 149. In that case the decedent's death occurred while he was employed as a bargeman and doing business of a maritime nature, and the Court held that the Congressional Act in question was invalid because it attempted to sanction state compensation remedies "for injuries suffered by employees engaged in maritime work".

The Jensen doctrine was likewise applied by the Supreme Court in *State of Washington v. W. C. Dawson & Co.* (1924), 264 U.S. 219. The Court dealt jointly with two cases. By the Act of June 10, 1922 (42 Stat. 634) Congress amended Sections 24(3) and 256 of the Judicial Code relating to admiralty and maritime jurisdiction (28 U.S.C.A. §§ 41(3), 256), by adding to the saving clause of that Act, "and to claimants for compensation for injuries to or death of persons other than the master or members of the crew of a vessel their rights and remedies under the Workmen's Compensation Law of any state, district, territory or possession of the United States, which rights and remedies when conferred by such law shall be exclusive.". One of the cases presented the question "whether one engaged in the business of stevedoring

whose employees work only on board ships in the navigable waters of Puget Sound, can be compelled to contribute to the accident fund provided for by the Workmen's Compensation Act of Washington," and the other case presented the question as to whether the Industrial Accident Commission of the State of California had jurisdiction to award compensation for "the death of a workman killed while actually engaged in maritime work, under maritime contract, upon a vessel moored at her dock in San Francisco Bay and discharging her cargo."

It is clear from decisions of the Supreme Court after the *Jensen* case that the Jensen doctrine does not apply to all maritime torts. In *Grant Smith-Porter Ship Co. v. Rohde* (1922), 257 U.S. 469, the Court held that in view of its exclusive features the Workmen's Compensation Act of the State of Oregon abrogated the right of the injured employee which would otherwise exist to recover damages in an admiralty court. The employee, a carpenter, was injured while working on a partially completed vessel lying at a dock in the Willamette River, at Portland, Oregon, which river is a part of the navigable waters of the United States. The Court held that jurisdiction in admiralty existed because the injury occurred on navigable waters. The Court stated, at page 475:

> "The contract for constructing 'The Ahala' was non-maritime, and although the incompleted structure upon which the accident occurred was lying in navigable waters, neither Rohde's general employment, nor his activities at the time had any direct relation to navigation or com-

merce. *Thames Towboat Co. v. The Schooner 'Francis McDonald'*, 254 U.S. 242. The injury was suffered within a State whose positive enactment prescribed an exclusive remedy therefor. And as both parties had accepted and proceeded under the statute by making payments to the Industrial Accident Fund it cannot properly be said that they consciously contracted with each other in contemplation of the general system of maritime law. *Union Fish Co. v. Erickson*, 248 U.S. 308. Under such circumstances regulation of the rights, obligations and consequent liabilities of the parties, as between themselves, by a local rule would not necessarily work material prejudice to any characteristic feature of the general maritime law, or interfere with the proper harmony or uniformity of that law in its international or interstate relations. *Southern Pacific Co. v. Jensen*, 244 U.S. 205; *Western Fuel Co. v. Garcia*, ante, 233."

In *Alaska Packers Assn. v. Industrial Accident Commission* (1928), 276 U.S. 467, the injured workman was a resident of California and was employed by a California corporation to do work in Alaska. He agreed to go to Alaska as a seaman and after arriving in Alaska to work as directed. He made nets, fixed up boats, and served as a fisherman on one of them. He was injured while attempting to push a stranded fishing boat off the beach. The Supreme Court held that, assuming the injury to be within the admiralty jurisdiction, the injured employee was not engaged "in any work so directly connected with navigation and commerce that to permit the rights of

the parties to be controlled by the local law would interfere with the essential uniformity of the general maritime law." Thereafter this Court upheld the application of the California Workmen's Compensation Act to two similarly employed cannery workers who met death in the wreck of a fishing schooner at sea. *Alaska Packers Assn. v. Marshall*, 95 F. 2d 279. See also *Millers' Indemnity Underwriters v. Brand* (1926), 270 U.S. 59.

The decedent was employed in a non-maritime industry and performed no maritime work. As stated by the district court, "Indeed the only aspect of this case which gives it any maritime flavor whatsoever is the locale of the accident." *King v. Pan American World Airways, supra.* Our study of the decisions of the Supreme Court above cited lead us to the conclusion that there is no constitutional barrier to the application of the California Workmen's Compensation Act to the facts of this case. In reaching that conclusion we have carefully reviewed the decisions of the Supreme Court in *Standard Dredging Co. v. Murphy* (1943), 319 U.S. 306, and *Pennsylvania Railway Co. v. O'Rourke* (1953), 344 U.S. 334, cited and relied upon by the appellant.

Is the California Workmen's Compensation Act abrogated by the Death on the High Seas Act? The Death on the High Seas Act was enacted to fill a void in the maritime law which was found to exist by the Supreme Court in *The Harrisburg*, 119 U.S. 199. The Act provides an admiralty remedy for wrongful death where none existed before. The language of the Act

does not purport to supersede a remedy afforded by a state workmen's compensation act for a death occurring on the high seas. Section 7 of the Act (supra) expressly provides that the provisions of any state statute giving or regulating rights of actions or remedies for death shall not be affected by the Act. The attitude of Congress at, prior and subsequent to the enactment of the Act toward state workmen's compensation acts was extremely friendly, as clearly reflected in the Congressional Acts declared unconstitutional in the Jensen, Knickerbocker and Dawson cases, supra. Decisions of the Supreme Court as cited supra hold that state workmen's compensation acts which provide an exclusive remedy to injured employees supersede the otherwise existing admiralty remedy for personal injuries in situations where the application of the state acts does not interfere with the uniformity of the maritime law. That the Death on the High Seas Act may have abrogated state wrongful death statutes for death occurring on the high seas is not persuasive that the Act likewise abrogates state workmen's compensation remedies. State wrongful death statutes require proof of fault. This same requirement is embodied in the Death on the High Seas Act. State wrongful death statutes in general do not purport or intend to apply outside the state's own boundaries. Uniformity perhaps in this field can only be achieved under the Death on the High Seas Act. Recovery under the Act may be uncertain and long delayed. The factors that might lead to the conclusion that the Death on the High Seas Act supplants or super-

sedes state wrongful death statutes do not apply and are not relevant to state workmen's compensation acts. Under such acts, compensation is payable without proof of fault but only on the basis of status as an employee. If death results in the course of employment, relief is prompt and certain.

In contending that the Death on the High Seas Act extends to wrongful death of employees, appellant has called to our attention the following cases: *Polland v. Seas Shipping Co., Inc.*, 2 Cir. (1945), 146 F. 2d 875, 877; *The Black Gull*, 2 Cir. (1936), 82 F. 2d 758, 759; *Decker v. Moore-McCormack Lines, Inc.*, D.C. Mass. 1950, 91 F. Supp. 560, 561; *Batkiewicz v. Seas Shipping Co.*, D.C.N.Y. 1943, 53 F. Supp. 802, 803; *The Four Sisters*, D.C.Mass. 1947, 75 F. Supp. 399, 400. In the *Polland* case, the plaintiff sued under the Jones Act, (46 U.S.C.A. Section 688), as administratrix of her husband's estate for damages for his death while in the course of his employment as a fireman on the "S.S. Algie" owned by the defendant. The jury returned a verdict for the plaintiff, and on appeal the defendant argued that drowning was not covered by the Jones Act. The Circuit Court affirmed the judgment. The *Black Gull* case involved an action to recover damages for the death of a harbor pilot killed by the negligence of a ship about to take him aboard. In sustaining the judgment against the defendant, the Court stated at page 761: "We have assumed that a compulsory pilot is not an employee of the vessel in the sense that a member of her crew is such. Therefore, any duty of protection owed to

him * * * must rest on some other basis than employment." The *Decker* case involved the deaths of two seamen killed in a collision between two vessels. Actions to recover damages were brought not against the vessel operated by the decedents' employer, but against the owner of the other vessel. In the *Batkiewicz* case, the court permitted plaintiff to amend by adding a count under the Death on the High Seas Act to a count under the Jones Act. In the *Four Sisters* case, which also involved the death of a seaman, the question dealt with was whether or not an action under the Jones Act excluded a remedy under the Death on the High Seas Act. It is to be noted that all of the cases cited involved seamen. None involved a state workmen's compensation act with its exclusive remedy provision. None involved the substantive question of law presented by the instant case.

Appellant makes reference to the "twilight zone" cases under which appellant states that resort may be had at the election of the claimant to either a federal, or state forum offering concurrent rights and remedies, and cites *Davis v. Department of Labor*, 317 U.S. 249, and *Hahn v. Ross Island Sand & Gravel Co.*, 358 U.S. 272. As stated by the Supreme Court in the Hahn case the Longshoremen's and Harbor Workers' Compensation Act does not apply if recovery for the disability or death through workmen's compensation may validly be provided by State law. The "twilight zone" was created in the Davis case, and as stated by Mr. Justice Stewart in his dissenting opinion in the Hahn case, "was a practical solution to a practical problem, a

problem stemming from *Southern Pacific Co. v. Jenson*, 244 U.S. 205, and one which 25 years of post-*Jenson*-history had failed to solve. The problem was how to assure to injured waterfront employees the simple, prompt and certain protection of workmen's compensation which Congress had clearly intended to give in enacting the federal statute. See 317 U.S., at 254. The *Davis* decision in effect told the injured employee that in a doubtful case he would be assured of workmen's compensation whether he proceeded under a state workmen's compensation act or the federal statute." In the *Davis* case the occupation of the petitioner's decedent was in the "twilight zone". The Supreme Court of the State of Washington annulled an award to petitioner under the State Workmen's Compensation Law. The Supreme Court of the United States reversed and sustained the award. In the *Haha* case, the Supreme Court stated:

> "As to cases within this 'twilight zone,' *Davis*, in effect, gave an injured waterfront employee an election to recover compensation under either the Longshoremen's Act or the Workmen's Compensation Law of the State in which the injury occurred. It seems plain enough that petitioner's injury occurred in the 'twilight zone,' and that recovery for it 'through workmen's compensation proceedings' could have been, and in fact was, validly 'provided by State law'—the Oregon Workmen's Compensation Act, Ore. Rev. Stat. §§656.002-656.990. Therefore, the Longshoremen's Act did not bar petitioner's claim under state law. But since his employer had elected to reject them the automatic compensation provisions of the Oregon Workmen's Compensation Act did not apply

to the claim. Section 656.024 of that law provides, however, that when an employer has elected to reject the Act's automatic compensation provisions his injured employee may maintain in the courts a negligence action for damages. Of course, the employee could not do this if the case were not within the 'twilight zone,' for then the Longshoremen's Act would provide the exclusive remedy. Since this case is within the 'twilight zone,' it follows from what we held in *Davis* that nothing in the Longshoremen's Act or the United States Constitution prevents recovery."

In the instant case decedent's employment was not maritime. The California Workmen's Compensation Act was in full force and effect. There was no federal workmen's compensation act in effect. We find nothing in the "twilight zone" cases which ousts the California State Workmen's Compensation Act, or permits appellant to elect between it and the Death on the High Seas Act. To permit such an election would destroy the exclusive remedy provision which is an essential element to the California Workmen's Compensation Act.

In contending that the California Workmen's Compensation laws furnish no basis for the judgment of the district court, appellant relies on the case of *Schellenger v. Zubik*, 170 F. Supp. 92. The question presented in that case was whether or not a seaman who signs a state workmen's compensation agreement, receives payments thereunder, and executes a final receipt is barred from his right of recovery under the Jones Act and under the doctrine of unseaworthiness. We do not find this case apposite. We have here-

fofore pointed out the non-maritime character of the decedent's employment and the exclusive provision of the California Workmen's Compensation Act which appellee relies upon in this case. We likewise are of the view that *Occidental Insurance Co. v. Industrial Accident Commission*, 24 Cal. 2d 310, is not in point. In that case the California Supreme Court annulled an industrial accident award in the case of a seaman injured in the course of his employment. The Court held that seamen are governed by admiralty law over which federal law is paramount. The *Betsy Ross* case, (9 Cir.) 145 F. 2d 688, adds nothing since the same parties, the same injuries, and the same employment were involved in this case as were involved in the Occidental Insurance Company case. This Court agreed with the State Court that employment of the injured workman was maritime in character, which fact deprived the Industrial Accident Commission of the State of California of jurisdiction. Finally, under this head appellant contends that Section 3203, supra, of the California Workmen's Compensation Act makes such law self-subordinating to the Death on the High Seas Act. We feel that this point has been disposed of adversely to such contention by what has already been said in this opinion.

Appellant's final contention is that under the decisions of this Court in *Higa v. Transocean Air Lines*, 230 F. 2d 780, and *Tribey v. Transocean Air Lines, Inc.*, 255 F. 2d 824, we are compelled to hold that the Death on the High Seas Act abrogated the remedy afforded under the California Workmen's Compensation Act. We do not agree. In the Higa case, Higa

was a passenger on an airplane which crashed in the Pacific Ocean 300 to 400 miles from Wake Island, when flying toward Honolulu. The administrator of Higa's estate instituted an action alleging that Higa's death was caused by the plane crashing into the Ocean. The action for damages was based on the Death on the High Seas Act and was brought as a common law civil suit rather than in admiralty. The district court dismissed the action because the action was not instituted on the admiralty side of the court. This Court affirmed the judgment of dismissal. The substantive question of law presented to us in this case was not involved in the Higa case. Although the Court by way of dictum expressed the view that a local wrongful death statute was not superseded by the Death on the High Seas Act, the wrongful death statute of the Territory of Hawaii was not mentioned in the opinion except in a footnote noting the existence of such an act. The Trihey case involved an action in admiralty for the wrongful death on the high seas of a passenger in an airplane which crashed. The district court found no negligence on the part of the defendants. This Court affirmed the judgment on the ground it could not say the findings of the district court were erroneous. Again the question of substantive law involved in the present case was not present in the Trihey case, nor even did not involve a local wrongful death statute. Appellant also relies on *D'Aleman v. Pan American World Airways*, (2 Cir.) 259 F. 2d 493. The decedent was a passenger on the defendant's airplane, flying from Puerto Rico to New York. Because of engine trouble and weather

conditions the plane proceeded to Virginia where it made a normal landing. The passengers were advised while enroute that one engine was being "feathered" and that the flight would be on the three remaining engines, and because of weather conditions the plane would land in Virginia. Several days after landing the decedent died in New York. The plaintiff's first cause of action, based upon the Death on the High Seas Act, alleged that the deceased became so terrified by the "feathering" of the engine and the announcement of the unscheduled landing in Virginia that he went into a state of shock which resulted in his death. The second cause of action was based upon alleged failure of the defendant to provide adequate medical care to the deceased. None of the workmen's compensation laws were involved. The district court, under the first cause of action, sitting without a jury, found no negligence. A jury sitting under the second cause of action found likewise. The Circuit Court found that the first cause of action was properly heard in admiralty without a jury, and that the ruling of the district court in excluding evidence offered by the plaintiff under the second cause of action was proper. This case does not bear on the specific problem before us.

We conclude that under the stipulated facts of this case and the applicable law appellant's sole remedy against the defendant is under the California Workmen's Compensation Act, and that the judgment of the district court must be and is hereby affirmed.

(Endorsed:) Opinion. Filed Aug. 27, 1959.

Paul P. O'Brien, Clerk.

Appendix "C"

United States Court of Appeals
for the Ninth Circuit

MARY C. HUDSON, as Administratrix of the Estate of Herbert A. Hudson, Deceased, *Appellant,* vs. TRANSOCEAN AIR LINES, a Corporation, and SLICK AIRWAYS, INC., a Corporation, *Appellees.*	No. 16,349

JUDGMENT

Appeal from the United States District Court for the Northern District of California, Southern Division.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Northern District of California, Southern Division, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this Court, that the Order of the said District Court in this cause be, and hereby is affirmed.

(Endorsed) Judgment. Filed and entered: December 9, 1959.

Paul P. O'Brien, Clerk.

Appendix "D"

United States Code Annotated, Title 46 Chap. 21—Secs. 761, 762, 763, 764, 765, 766, 767

Death on the High Seas by Wrongful Act

"Sec. 761. Right of action: where and by whom brought.

"Whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State, or the District of Columbia, or the Territories or dependencies of the United States, the person representive of the decedent may maintain a suit for damages in the district courts of the United States, in admiralty, for the exclusive benefit of the decedent's wife, husband, parent, child, or dependent relative against the vessel, person, or corporation which would have been liable if death had not ensued. Mar. 30, 1920, c. 111, Sec. 1, 41 Stat. 537."

"Sec. 762. Amount and apportionment of recovery.

"The recovery in such suit shall be a fair and just compensation for the pecuniary loss sustained by the persons for whose benefit the suit is brought and shall be apportioned among them by the court in proportion to the loss they may severally have suffered by reason of the death of the person by whose representative the suit is brought. Mar. 30, 1920, c. 111, Sec. 2, 41 Stat. 537."

"Sec. 763. Limitations.

"Suit shall be begun within two years from the date of such wrongful act, neglect, or default, unless during that period there has not been reasonable opportunity for securing jurisdiction of the vessel, person, or corporation sought to be charged: but after the expiration of such period of two years the right of action hereby given shall not be deemed to have lapsed until ninety days after a reasonable opportunity to secure jurisdiction has offered. Mar. 30, 1920, c. 111, Sec. 3, 41 Stat. 537."

"Sec. 764. Rights of action given by laws of foreign countries.

"Whenever a right of action is granted by the law of any foreign State on account of death by wrongful act, neglect, or default occurring upon the high seas, such right may be maintained in an appropriate action in admiralty in the courts of the United States without abatement in respect to the amount for which recovery is authorized, any statute of the United States to the contrary notwithstanding. Mar. 30, 1920, c. 111, Sec. 4, 41 Stat. 537."

"Sec. 765. Death of plaintiff pending action.

"If a person die as the result of such wrongful act, neglect, or default as is mentioned in section 761 of this title during the pendency in a court of admiralty of the United States of a suit to recover damages for personal injuries in respect of such act, neglect, or default, the personal representative of the decedent may be substituted as

a party and the suit may proceed as a suit under this chapter for the recovery of the compensation provided in section 762 of this title. Mar. 30, 1920, c. 111, Sec. 5, 41 Stat. 537."

"Sec. 766. Contributory negligence.

"In suits under this chapter the fact that the decedent has been guilty of contributory negligence shall not bar recovery, but the court shall take into consideration the degree of negligence attributable to the decedent and reduce the recovery accordingly. Mar. 30, 1920, c. 111, Sec. 6, 41 Stat. 537."

"Sec. 767. Exceptions from operation of chapter.

"The provisions of any State statute giving or regulating rights of action or remedies for death shall not be affected by this chapter. Nor shall this chapter apply to the Great Lakes or to any waters within the territorial limits of any State, or to any navigable waters in the Panama Canal Zone. Mar. 30, 1920, c. 111, Sec. 7, 41 Stat. 538."

Appendix "E"

AWARD

Award Is Made in favor of Mary C. Hudson, Christine A. Hudson and Lori Lee Hudson, against American Surety Company of New York, payable to Mary C. Hudson, of a death benefit of $8750 payable at the rate of $35 a week commencing July 13, 1953, and continuing until the full amount of said sum has been paid, together with interest as provided by law, less all sums heretofore paid herein as death benefit, and less $150 payable to J. Warren Manuel as attorney's fee.

Dated at San Francisco, California, Dec. 29, 1953.

/s/ EZRA SHAPEERO,
Referee, Industrial
Accident Commission.

No. 152-271
ES:GR

Served January 8, 1954.

Appendix "F"

In the District Court of the United States
Northern District of California
Southern Division

In Admiralty

MARY C. HUDSON, as Administratrix of the Estate of Herbert A. Hudson, Deceased, *Libelant,* vs. TRANSOCEAN AIR LINES, a Corporation, and SLICK AIRWAYS, INC., a Corporation, et al., *Respondents.*	No. 27,163

ORDER GRANTING SUMMARY JUDGMENT AND FINAL DECREE

Respondent Transocean Air Lines, Inc., having duly made a motion for summary judgment and libelant Mary C. Hudson, as Administratrix of the Estate of Herbert A. Hudson, Deceased, appearing by her proctors, Sheridan Downey, Jr., and John B. Kramer, and respondent Transocean Air Lines, Inc., appearing by its proctors Jessie H. Steinhart, and John J. Goldberg, by John J. Goldberg, and Neil E. Falconer, and the parties having filed written memo-

randa of points and authorities, the Court being fully advised the case having been submitted, and the Court finding that recovery by libelant in this action is barred by reason of the California Workmen's Compensation Act,

Now, Therefore, (1) It is Hereby Ordered that the motion of respondent Transocean Air Lines, Inc., for summary judgment be and the same is hereby granted.

(2) It is Further Ordered, Adjudged and Decreed that libelant Mary C. Hudson, as Administratrix of the Estate of Herbert A. Hudson, Deceased, take nothing under said libel and that respondent Transocean Air Lines, Inc., have summary judgment against libelant in this action and for its cost in the sum of $.....

Dated: December 18, 1958.

/s/ Albert C. Wollenberg,
United States District Judge.

LE COPY

Office-Supreme Court, U.S.
FILED
MAR 11 1960
JAMES R. BROWNING, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 687

MARY C. HUDSON as Administratrix of the Estate of Herbert A. Hudson, Deceased, *Petitioner,*

vs.

TRANSOCEAN AIR LINES, a Corporation, *Respondent.*

Brief of Respondent Transocean Air Lines, Inc., in Opposition to Petition for Certiorari

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In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 687

MARY C. HUDSON as Administratrix of the Estate of Herbert A. Hudson, Deceased,
Petitioner,

vs.

TRANSOCEAN AIR LINES, a Corporation,
Respondent.

Brief of Respondent Transocean Air Lines, Inc., in Opposition to Petition for Certiorari

Respondent Transocean Air Lines, Inc. (hereinafter referred to as Transocean) respectfully files this brief in opposition to the Petition for a Writ of Certiorari heretofore filed by petitioner Mary C. Hudson to review and reverse the judgment of the Court of Appeals for the Ninth Circuit.

STATEMENT OF THE CASE

The decedent Herbert A. Hudson, a co-pilot in the employ of Transocean, was killed on or about July 12, 1953, when an airliner of which he was a crew member crashed while in flight over the Pacific Ocean from Guam to the

United States. Transocean was and is a California corporation, with its principal headquarters at Oakland, California. The decedent was hired in Oakland, based in Oakland, and he and his wife, the present petitioner, were at all relevant times, residents of California. At and prior to the time of Hudson's death a Collective Bargaining Agreement was in effect between Transocean and the Air Carrier Pilots' Association (Non-Scheduled) International, Section 11 of which provided in part as follows:

> "(a) It is agreed that the provisions of the California State Compensation Law shall be applicable to all pilots and co-pilots covered by this Agreement * * *"

Pursuant to the California Workmen's Compensation Act, Transocean had "secured" the rights of its employees under said Act by effecting workmen's compensation insurance.

Following the death of decedent, petitioner, represented by independent counsel, filed an application for death benefits with the Industrial Accident Commission of California and, after a hearing before said Commission, secured an award on December 29, 1953. This award was thereafter, on petitioner's application, paid to petitioner in a lump sum on or about May 18, 1955. Less than two months later, petitioner filed the instant action. (The foregoing appears from the Stipulation of Facts, (Tr. pp. 18-23).)

Upon these facts the trial court held that the Compensation Act remedy precluded any claim under the Death on the High Seas Act[1] and accordingly granted summary judgment in favor of Transocean. This judgment was thereafter affirmed by the Court of Appeals for the Ninth Circuit.[1a]

---

1. Act of Mar. 30, 1920, c. 111, 41 Stat. 537, 46 U.S.C. Sections 761-767.

1a. On December 9, 1959, in 272 F.2d 397.

THE QUESTION PRESENTED

Where:

(1) No Federal compensation statute or act of any kind grants or regulates remedies for industrial injuries or death in the airline industry, and

(2) Any and all airline industrial injuries or deaths occurring in flight over any part of the United States, or over any foreign country in the world, are regulated by the applicable State workmen's compensation remedy only;

Is application of such State workmen's compensation remedy (and its exclusive remedy provision) in the case of the death of an airline employee in an air disaster occurring during a flight over water from Guam to the United States barred by reason of the Federal Death on the High Seas Act?

I. Contrary to Petitioner's Assertion, the Question Decided by the Court of Appeals Neither (a) Raises Any Conflict of Authority, nor (b) Does It Involve an Issue of "Wide and General Interest".

The Petition asserts that the question decided by the Court of Appeals "is of wide and general interest" (Petition, p. 6); and that the opinion of the court below "appears to be in conflict with opinions of this Court and with other United States Courts of Appeals" (Petition, p. 7). Each of these statements, we believe, is demonstrably incorrect.

This case is one of two companion cases, the other being *King v. Pan American*.[2] The two cases involved the same issue. In each case summary judgment was granted the respondent in the District Court, which judgment was affirmed on appeal by the Court of Appeals for the Ninth

2. A Petition for Certiorari in *King v. Pan American* is pending before this Court as Docket # 686, following the decision of the Court of Appeals for the Ninth Circuit on August 27, 1959, *reh'g denied* December 8, 1959, 270 Fed. 2d 355.

Circuit. The petitioners in each case have now filed, by the same counsel, substantially identical petitions for certiorari in this Court.

(a) There Is No Conflict Between the Decision of the Court of Appeals in this Case and Any Opinions of this Court, Any Other Court of Appeals, or Any Court in the Land, on the Question Here Involved.

This case and the *King*[3] case are the only cases ever decided which deal with the issue here raised, that is, a challenge to the application of a state workmen's compensation act to an airline industrial injury occurring during a flight over water.

In the *King* case, summary judgment was granted by District Judge Louis Goodman of the United States District Court in San Francisco. This judgment was thereafter affirmed on appeal by a panel of the Court of Appeals for the Ninth Circuit, consisting of Judges Stephens, Jertberg (the author of the opinion) and Hamlin. After the filing of the carefully written opinion of Judge Jertberg in the *King* case on August 27, 1959, a Petition for Rehearing was filed, considered, and thereafter denied on December 8, 1959.

In the instant case, summary judgment was granted by District Judge Albert C. Wollenberg, likewise of the District Court in San Francisco. This judgment was affirmed on appeal by a separate panel of the Court of Appeals for the Ninth Circuit, consisting of Judges Chambers, Orr and Pope, the opinion of the Court noting and relying upon the opinion of Judge Jertberg in the *King* case.

It is to be noted these rulings were unanimous.

We know of no other reported case, either inside or outside the Ninth Circuit, dealing with the exact question here at issue. There is no other reported case which has even remotely similar facts or poses this problem; this is best

3. Cited in footnote 2 *supra*.

evidenced by petitioner's failure to cite any. The authorities cited in petitioner's brief involve completely dissimilar fact situations and legal issues, as will be demonstrated under Topic V of this brief.

(b) This Case Poses No Question of "Wide and General Interest".

Likewise, again contrary to petitioner's statement, it is clear this case is not one of "wide and general interest" but rather (in the words of the Court of Appeals) presents but a "narrow question" (*King v. Pan American*, 270 F.2d 355 at 356). Commercial airliners have been making trans-oceanic flights since the late 1930s, a period of over twenty years. The legal issue which the Court of Appeals settled in its *King* opinion had never come up in any reported case until the two accidents involved in the instant case and the companion *King* case. So far as we know, in no prior case had the personal representative of a deceased airline employee, killed in the course of his employment during a flight over water, ever challenged the application or effect of a State workmen's compensation act under such circumstances.

We submit that a question which has come up in only two cases in over twenty years is scarcely one of such "wide and general interest" as to demand the attention of this Court.

Nor, in view of the ever improving safety record of commercial airlines, can it be said that the rule of law thus settled by the Court of Appeals will ever be of concern to more than a mere handful of people.

II. Petitioner Has Abandoned All Arguments Made in the Courts Below Save for the Argument as to the Death on the High Seas Act.

As noted, the ruling of the courts below was that the California State Workmen's Compensation Act (including

its exclusive remedy provision) applied to the death of an airline employee killed in the scope of his employment where the airplane crash occurred during an over-water flight from Guam to the United States and precluded an action under the Death on the High Seas Act.

In the courts below, petitioner's counsel raised two types of objections to such a result: they contended that this result was (a) forbidden by the United States Constitution and (b) was contrary to the Death on the High Seas Act. The constitutional argument sought to apply the doctrine of *Southern Pacific v. Jensen*[4] to airlines and argued that the accidental and chance contact of an airplane with water after an air disaster in some way—as a *constitutional matter*—made this case one of exclusive admiralty jurisdiction.[5] In affirming *per curiam*, the Court of Appeals relied on its previous *King* opinion; that opinion held the *Jensen* doctrine related to *maritime* matters and operated to invalidate State legislation only where it worked "material prejudice to the characteristic features" of general *maritime* law, noted that the employment here involved was completely *non-maritime* (and in which industrial injuries had never been the subject of regulation by Federal—let alone maritime—law), and therefore held the *Jensen* doctrine totally inapplicable. The non-applicability of the *Jensen* doctrine to the wholly non-maritime employment in the instant case is even clearer than it was to those quasi-maritime employments as to which the line of cases commencing with *Grant Smith-Porter Ship Co. v. Rohde*, 1922,

4. 1917, 244 U.S. 205, 61 L.Ed. 1086. (The *Jensen* case was not cited by name but was inferentially relied upon by citation of the *Knickerbocker Ice* and *Washington v. Dawson & Co.* cases, referred to at page 10 of this Brief.)

5. Such a ruling, placed on constitutional grounds, would of course be beyond the power of Congress to alter, however unsatisfactory its practical working and results.

257 U.S. 469, 66 L.Ed. 321, held that State workmen's compensation acts might properly abrogate otherwise applicable admiralty remedies.

Petitioner's brief in this Court has now abandoned the *Jensen* argument and does not dispute the lower courts' ruling in that regard. While petitioner's brief does state that constitutional provisions[6] are involved, it seems clear this argument is wholly premised on the existence of the Death on the High Seas Act.

Thus the question is, does the Death on the High Seas Act prevent the California State Workmen's Compensation Act (and its exclusive remedy provision) from applying to the death of an airline employee killed in the scope of his employment in an air disaster occurring during a flight from San Francisco to Hawaii, where the airplane crashes into the ocean.

III. What Is Not in Dispute.

Petitioner does *not* dispute that:

(1) There is *no* Federal compensation act for industrial injuries of airline employees. While we do not dispute that Congress could properly enact such an act, petitioner equally does not dispute that Congress has not chosen to do so.

(2) Airline industrial accidents have been uniformly held to be governed by State workmen's compensation acts, even in extra-territorial jurisdiction situations.[7]

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6. Petitioner cites the Interstate and Foreign Commerce Clause (Article I, Section 8, Clause 3) and the Judicial Power Clause (Article III, Section 2, Clause 1) of the United States Constitution.

7. See the following cases cited in the opinion of the Court of Appeals in *King v. Pan American*, 270 F.2d 355 at 360:

Willingham v. Eastern Air Lines, 2 Cir., 199 F.2d 623;

Severson v. Hanford Tri-State Air Line, Inc., 8 Cir., 105

(3) Such extra-territorial jurisdiction of State workmen's compensation acts is valid.[8]

(4) The State of California had ample contacts with the employment here in question to establish jurisdiction under the California State Workmen's Compensation Act.

(5) The Collective Bargaining Agreement in force between Transocean and the union of which decedent was a member expressly provided that the California State Compensation Act should be applicable.

(6) Petitioner on her own initiative and acting through independent counsel filed an application under the California Workmen's Compensation Act and secured an award thereunder, which she thereafter collected in full before instituting the present action.

In short, petitioner does not dispute that had the disaster in question occurred over California, or over any other State of the United States, or over any foreign country, the California Workmen's Compensation Act and it alone would have applied. Petitioner's sole contention is that the Death on the High Seas Act completely changes this result where the crash occurs over an ocean.

Anomalous though this result would be, we concede that Congress could, if it wished, require this result. The question, however, is whether the Sixty-sixth Congress actually did so when on March 30, 1920, it enacted the Death on the High Seas Act.

F.2d 622, c.d. 309 U.S. 660;
Spelar v. American Overseas Air Lines, Inc., 80 F. Supp. 344;
Urda v. Pan American Airways, 5 Cir., 211 F.2d 713;
Duskin v. Pennsylvania Central Air Lines, 6 Cir., 167 F.2d 727, c.d. 335 U.S. 829.

8. See *Alaska Packers Assn. v. Industrial Accident Commission of California*, 1935, 294 U.S. 532, 79 L.Ed. 1044, *Cardillo v. Liberty Mutual Insurance Co.*, 1947, 330 U.S. 469, 91 L.Ed. 1028

IV. The Death on the High Seas Act Does Not Bar Application of State Workmen's Compensation Acts to Airline Industrial Injuries.

It must be stressed that, while petitioner's counsel purport to rely on the Death on the High Seas Act, at no point in their brief do they discuss (a) the language of Section 7 of that Act,[9] (b) the general purpose for which that Act was enacted, or (c) the legislative history of that Act. Nor do petitioner's counsel challenge in any specific way the discussion of either the District Court or the Court of Appeals, in their respective opinions, concerning the language, general purpose and legislative history of that Act.

That studied and prolonged silence, before three Courts, is, we submit, the most eloquent refutation of petitioner's position in this case.

As noted in the *King* opinion of the Court of Appeals, not only does the Death on the High Seas Act *not* purport to supersede State workmen's compensation remedies, but rather: "Section 7 of the Act * * * expressly provides that the provisions of any State statute giving or regulating rights of action or remedies for death shall *not* be affected by the Act" (270 Fed. 2d 355 at 362, emphasis added.) The language in Section 7 so referred to was no mere inadvertence of Congress, but was expressly placed therein by an amendment, known (after its author, Congressman Mann,) as the Mann Amendment, for the express purpose of insuring that State jurisdiction should *not* be destroyed.

The general purpose of the Act (as stated by District Judge Goodman in his *King* opinion) was "to fill a void in the maritime law and provided an admiralty remedy for wrongful death where none had existed before." (166

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9. "The provisions of any State statute giving or regulating rights of action or remedies for death shall not be affected by this chapter. * * *"

Fed. Supp. 136 at 139.) The purpose was to remedy the anomalous defect of the common law, whereby a negligent defendant who had injured another and was liable for said injuries if the victim lived, escaped liability altogether if the victim died. On land, this defect had been remedied by statute by most state legislatures, but the common law rule had not been changed in admiralty. This anomaly in admiralty law was vivid in the minds of Congress, in view of the litigation arising out of the then recent sinking of the Titanic. The purpose of the Act was *not* to regulate recovery for industrial injuries in any employment—let alone the airline industry (which was then not even conceived of)—nor to supersede State workmen's compensation acts in any way.

Pertinent portions of the legislative history which clearly demonstrate both the general purpose of the Death on the High Seas Act and the specific purpose of the Mann Amendment, quoted from the debate in the House of Representatives on March 17, 1920 (59 Congressional Record, pp. 4482-4487), are set forth in Appendix A to this brief.

As noted in the *King* opinion of the Court of Appeals, the attitude of Congress in the period in which the Death on the High Seas Act was enacted was extremely friendly to the maximum possible application of State workmen's compensation acts. This is made clear by the Acts of the 65th Congress in 1917 and of the 67th Congress in 1922, dealt with in *Knickerbocker Ice Co. v. Stewart*, 1920, 253 U.S. 149, 64 L. Ed. 834, and *Washington v. Dawson & Co.*, 1924, 264 U.S. 219, 68 L. Ed. 646 (and referred to by petitioner in her brief at pages 7 and 8).[10]

[10] The holdings of these two cases are of course totally inapplicable here, for the reasons discussed by the Court of Appeals in the *King* case. Both dealt with essentially maritime employments a bargeman in the *Knickerbocker Ice* case and stevedores and other

In the light of the foregoing, petitioner's contention that the California State Workmen's Compensation Act is inapplicable because Congress so intended can be seen to be fanciful.

Petitioner seeks to emphasize the locality of the accident, and to ignore or slur over the (non-maritime) nature of the work being performed. Petitioner seeks to distinguish the prior opinions of this Court cited by the Court of Appeals in *King (Grant Smith-Porter Ship Co. v. Rohde*, 1922, 257 U.S. 469, 66 L.Ed. 321, *Millers' Indemnity Underwriters v. Braud*, 1926, 270 U.S. 59, 70 L.Ed. 470, *Alaska Packers Association v. Industrial Accident Commission*, 1928, 276 U.S. 467, 72 L.Ed. 656, *et al.*) as "ship-shore" or "territorial waters" cases. Petitioner seems to argue that a maritime locale, without regard to the maritime or non-maritime nature of the work being performed, excludes operation of State workmen's compensation laws.

This ignores the fact that the decisive consideration in the *Rohde*, *Braud* and *Alaska Packers* cases *et al.* was *not* the question of maritime locality (indeed it was conceded in each that the locality was sufficiently maritime for admiralty jurisdiction), but the *nature of the work* and whether it was "essentially maritime" or not. It was because of the nature of the work that this Court held, in the cases cited, that the State workmen's compensation acts abrogated the otherwise applicable admiralty remedies. This is best demonstrated by the language of Chief Justice Taft in *London Guarantee & A. Co. v. Industrial Accident Commission*, 1929, 279 U.S.

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workmen "actually engaged in maritime work" in *State of Washington v. W. C. Dawson & Co.*; in both, the *Jensen* doctrine was held to preclude State regulation of industrial injuries as to such employees "engaged in maritime work".

The completely non-maritime nature of the employment involved here is of course tacitly conceded by petitioner's brief.

109, 73 L. Ed. 632, in discussing and explaining the *Rohde*, *Braud* and *Alaska Packers* cases. In pointing out that in those cases State workmen's compensation acts were properly held to exclude otherwise applicable admiralty remedies, Chief Justice Taft said:

> "[Those cases] may be said to be of an amphibious character. They have an admiralty feature about them *in the locality* where they occurred, although even this is doubtful with respect to the Alaska case. But the contract in the Rohde Case was nonmaritime, the ship was incomplete, and being completed under a nonmaritime contract, both parties had made a nonmaritime contract with reference to their liabilities and not in contemplation of the admiralty law. The Braud Case was one of a maritime tort. *But it had no characteristic feature of the general maritime law except locality*, and it was very like in its relation to the state law to the Rohde Case. *The employment was not maritime, and the transaction and the circumstances thus seemed to have but one characteristic that was maritime.* (279 U.S. at 121, 73 L. Ed. at 635-636; emphasis added.)"[10a]

A further and independent reason why petitioner cannot attempt to rely on the Death on the High Seas Act to avoid the application of the California Workmen's Compensation Act (and its exclusive remedy provision) lies in the fact that Section 1 of that Act does not purport to create a cause of action in *every* case where a death occurs on the high seas due to negligence, but instead limits such to claims "against the vessel, person or corporation which would have been liable [if] death had not ensued." The cause of action lies only where the decedent himself might have recovered had he

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10a. In our case, unlike the *Rohde*, *Braud* and *Alaska Packers* cases, the decedent's employment was not even "amphibious", but was *wholly* non-maritime.

survived. (See *Tiffany, Death by Wrongful Act.*, 2d Ed. Par. 63, pp. 132-133.)

It is clear that had decedent Hudson sustained only personal injuries he could *not* have sued Transocean on any theory of alleged negligence or wrongful conduct. His sole right would have been to compensation, payable, not on the basis of anyone's fault, but by reason of the industrial nature of the injury.

V. None of the Cases Cited by Petitioner Is Either Legally or Factually in Point.

Petitioner's counsel cite in support of their contentions but five cases.[11] These are:

Hahn v. Ross Island Sand & Gravel Co., 358 U.S. 272, 3 L. Ed. 2d 292, 79 S. Ct. 266;

The Tungus v. Skovgaard, 358 U.S. 588, 3 L. Ed. 2d 524, 79 S. Ct. 503;

Pope & Talbot Inc. v. Hawn, 346 U.S. 406, 98 L. Ed. 143, 74 S. Ct. 202;

Middleton v. Luckenbach S.S. Co., 70 Fed. 2d 326;

Turner v. Wilson Line of Mass., 242 Fed. 2d 414.

None of these cases is either factually or legally in point.

Of these five cases, only *one* even involved a claim against an employer arising out of an employee's industrial injury, or the effect of a State workmen's compensation act. This was *Hahn v. Ross Island Sand & Gravel Co.*, which involved a waterfront employee "injured while working on a barge in navigable waters" (358 U.S. 272 at 274, 3 L. Ed. 2d 292 at 294) rather than an airline employee. This case, however, did not involve a death claim sought to be founded

11. Other than the *Knickerbocker Ice* and *Dawson* cases, discussed above.

upon Federal law, but rather a personal injury claim founded upon Oregon State law. *Concededly* the Oregon State Compensation Act did *not* apply due to the defendant employer's knowing failure and refusal to comply with the provisions of that Act.[12] This Court held that the plaintiff's claim under State law was not barred by the provisions of the Federal Longshoremen's Act. The case did not even by dictum in any way discuss the situation presented here. How a case which did not involve airline employment, did not involve any death act, and in which State law, rather than Federal law, was held to govern, in any way aids petitioner in the instant case we fail to see.

The remaining four cases not only (1) do not involve airline employees, and (2) do not involve the effect of State workmen's compensation acts, but they (3) do not even involve claims against employers arising out of industrial injuries sustained by employees. The suits involved in each case were brought against third persons, not against employers. The *Haavn* case did not involve a death action at all, *The Tungus* mentioned the Death on the High Seas Act only in casual discussion, noting its inapplicability, and the remaining two cases which did actually in some way involve the Death on the High Seas Act are inapposite on their facts and legal issues.

The *Haavn* case held that a carpenter, sustaining personal injury while engaged in repair work on a ship berthed at a pier on the Delaware River, might recover against the shipowner (who was not the plaintiff's employer) under the doctrine of unseaworthiness; the plaintiff's work was held to fall within the rule of the *Sieracki* case,[12a] which extended

12. Unlike Transocean in the instant case, which fully complied with the requirements of the California Workmen's Compensation Act.

12a. *Seas Shipping Co. v. Sieracki*, 328 U.S. 85, 90 L.Ed. 1099.

the warranty of seaworthiness to stevedores and other persons not members of the ship's crew but engaged upon ship's work. The opinion of this Court specifically noted that the plaintiff "was injured on navigable waters while working on a ship to enable it to complete its loading for safer transportation of its cargo by water." (346 U.S. 406 at 409, 98 L. Ed. 143 at 151) In answer to the contention that the *Sieracki* doctrine extended the warranty of seaworthiness only to stevedores and that Hawn was not a stevedore, the Court answered:

> "Sieracki's legal protection was not based on the name 'stevedore' *but on the type of work he did* and its relationship to the ship and to the historic doctrine of seaworthiness." (346 U.S. 406, 413, 98 L. Ed. 143 at 152-153, emphasis added.)

In the instant case, involving an airline employee and an airplane accident, we have no "historic doctrine of seaworthiness" and no ship's repair work performed aboard a ship floating upon navigable waters. In our case the "type of work [the decedent] did" was completely non-maritime and unrelated, factually, historically or in any other way to the maritime work involved in *Hawn*. It seems clear this case is not in point here.

In *The Tungus* suit was brought for the death of an oil company maintenance man killed aboard a ship docked in the port of Bayonne, New Jersey; the suit was brought, not against the decedent's employer,[13] but against the shipowner. While this Court's opinion did note in passing that the Death on the High Seas Act did not apply since the death occurred in territorial waters, it is clear that this Court

13. State Workmen's Compensation benefits had been secured from the employer. See footnote 4 to the opinion of this Court, 358 U.S. 588 at 590, 3 L.Ed. 2d 524 at 527.

was referring to Section 1 of the Act (46 U.S.C. Section 761) rather than Section 7 as Petitioner claims.[14]

The issues in *The Tungus* were: (1) Were the Federal Courts, in granting relief, restricted by the scope of the New Jersey Wrongful Death Act, and (2) Had the lower Courts properly construed that Act. The case did not remotely involve any issue comparable to the one decided here.

The opinion of this Court in *The Tungus* used the following language:

> "The legislative history of the Death on the High Seas Act discloses a clear congressional purpose to 'leave unimpaired the rights under State statutes as to deaths on waters within the territorial jurisdiction of the States.' S Rep. No. 216, 66th Cong. 1st Sess. 3; HR Rep. No. 674, 66th Cong. 2d Sess. 3. The record of the debate in the House of Representatives preceding passage of the bill reflects deep concern that the power of the States to create actions for wrongful death in no way be affected by enactment of the federal law. 59 Cong. Rec. 4482-4486." (358 U.S. at 593, 3 L. Ed. 2d at 529.)

It is obvious that neither the facts nor the holding of this Court in *The Tungus* in any way involved the operation

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14. The Court's language is as follows:

"We begin as did the Court of Appeals with the established principle of maritime law that in the absence of a statute there is no action for wrongful death. The Harrisburg, 119 US 199, 30 L ed 358, 7 S Ct 140. Although Congress has enacted legislation, notably the Jones Act,[2] and the Death on the High Seas Act,[3] providing for wrongful death actions in a limited number of situations,[4] no federal statute is applicable to the present case; Skovgaard was not a seaman,[5] and his death occurred upon the territorial waters of New Jersey.[6]"

Footnote 6 reads as follows:

"[6]The Death on the High Seas Act creates a right of action only for a 'wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State • • •' 46 USC Sec. 761."

of State statutes (let alone State workmen's compensation acts) beyond the territorial waters of the State and that this Court in no sense construed, or had occasion to construe, the meaning of Section 7 of the Death on the High Seas Act in that regard. If the language of this Court quoted above, however, be deemed to cast any light on this question, we submit it favors the position of Pan American, rather than of petitioner. The Senate Committee Report quoted in the Court's opinion related to the *original* draft of the Death on the High Seas Act *as reported from committee*, Section 7 of which would by implication have eliminated operation of State statutes beyond State territorial waters. It was because Congressman Mann objected to such elimination that he introduced the Mann Amendment so that (in the words of the *Tungus* opinion): "The power of the States * * * [would] *in no way* be affected by enactment of the Federal law." (Emphasis added.) The Mann Amendment, of course, was adopted and is embodied in Section 7 in its present form.

Middleton v. Luckenbach S.S. Co. involved the death of a seaman in a collision between two ships on the high seas. The sole legal question presented was whether the decedent's mother was barred from recovery under the Act (which authorizes recovery for the benefit of a decedent's "parent") because the decedent was her illegitimate, rather than her legitimate, son. The Court held that the Act protected the parents of both legitimate and illegitimate children. How this case "conflicts" with the opinion of the Court of Appeals in the instant case is impossible for us to see.

In *Turner v. Wilson Line of Mass.*, an employee of a repair company, aboard a ship which had run aground in Boston Harbor, died of carbon monoxide poisoning, and his personal representative brought suit against the owner of the grounded ship. The District Court dismissed the action and the Court of Appeals affirmed, pointing out the Jones

Act did not apply since the decedent was *not* the defendant's employee; the Death on the High Seas Act did not apply since the death occurred in territorial waters; and the federal court lacked jurisdiction as to any claim based on a State wrongful death statute (since both plaintiff and defendant were citizens of Massachusetts, see 242 Fed. 2d at 415-416). Here again, we fail to see how the holding of this case "conflicts" with the holding of the Court of Appeals for the Ninth Circuit in the instant case.

CONCLUSION

We submit that Petitioner has failed to show any error in the rulings of the Court below and has further failed to show any conflict whatever between the rulings of the courts below and the opinions of this Court or any other court. Far from the question being one of "wide and general interest", as claimed, this "narrow question" (to borrow the words of the Court of Appeals) has come up but twice in over twenty years. The law has been settled through the definitive opinions of the unanimous courts below. In view of these considerations, no reason exists for this Court to grant certiorari.

The Petition for Certiorari should be denied.

Dated: at San Francisco, California
March 7, 1960

Respectfully submitted,

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(Appendix Follows)

Appendix

Extracts from the Discussion in the House of Representatives on March 17, 1920 on the Proposed Death on the High Seas Act (59 Congressional Record, Pages 4482-4485, March 17, 1920; emphasis added.):

Chairman Volstead began the discussion:

"Mr. Speaker, this legislation is an old friend that has been pending in Congress a great many years. It has been passed from time to time, sometimes in the House and sometimes in the Senate. The bill, if you will examine the report made upon it, *is intended to supply a defect which now exists under what was the common-law* rule as to actions affecting injuries that might be caused through the wrongful act or neglect of persons engaged in shipping on the high seas. If the injury did not result in death, a cause of action exists; the injured person might go into a court of admiralty and secure relief, but if death resulted courts applied the old common-law doctrine that the cause of action dies with the person; that is, the cause of action was personal and did not survive the injured party.

"The object of this bill is to give a cause of action in case of death resulting from negligence or wrongful act occurring on the high seas. Nearly all countries have modified the old rule which did not allow relief in the case of death under such circumstances. Under what is known as Lord Campbell's act, England many years ago authorized recovery in such cases. France, Germany, and other European countries now follow this more humane and enlightened policy and allow dependent parties to recover in case of death of their near relatives upon the high seas.

"This bill was introduced in the Senate, has been passed by that body, and is substantially in the form in which it passed this House in the Sixty-fourth Congress. In the Sixty-fifth Congress this same bill, or a very similar one, was reported from the Judiciary

Committee, but did not reach consideration on the floor of the House. * * *" (Page 4482, cols. 1-2)

"Mr. Mann of Illinois. Now, I do not know whether I am right or wrong about it, because I have not examined the report on this bill carefully as reported this time. But I remember this bill very distinctly in previous Congresses, and my impression, which very likely may be erroneous, is that the purpose of the bill was to confer jurisdiction in certain cases of death where no jurisdiction now exists. I was under the impression that *the bill was not intended to take away any jurisdiction which can now be exercised by any State court* * * *" (Page 4484, col. 1)

* * * * * * *

"Mr. Mann of Illinois. We give a certain class of rights under this act. If this act as originally drawn by the admiralty lawyers was intended for the purpose of taking away jurisdiction now conferred by State statutes, it ought to be very critically examined." (Page 4484, col. 2)

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"Mr. Mann of Illinois. They would not be required to comply with the laws of a State. The gentleman's proposition [i.e., the bill *before* the Mann amendment] would take away the right of the State to apply its own laws." (Page 4484, col. 2)

* * * * * * *

"Mr. Mann of Illinois. That is the way it will be left, *so that the act will not take away any jurisdiction conferred now by the States.*" (Page 4485, col. 1)